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No. OFFICE OF THE CLERK

IN THE
Supreme Court of the United States

**ARMCO EMPLOYEES INDEPENDENT
FEDERATION, INC., PETITIONER**

v.

AK STEEL CORPORATION

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether under *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29 (1987) and related Supreme Court precedent, a court may deny enforcement of a labor arbitration award which reflects the arbitrator's interpretation and application of the underlying labor agreement, but which the court concludes, upon *de novo* interpretation of the labor agreement, conflicts with another provision of the labor agreement never brought to the attention of the arbitrator by the party who first asserts the existence of a conflict in enforcement proceedings.

PARTIES TO THE PROCEEDINGS

The caption of the case includes all parties to the proceedings in the district court and court of appeals.

CORPORATE DISCLOSURE STATEMENT

Petitioner Armco Employees Independent Federation, Inc. is a not-for-profit corporation organized and existing under the laws of Ohio. It has no parent corporation. It issues no stock. No publicly held company has any ownership interest in the Armco Employees Independent Federation, Inc.

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PETITION FOR WRIT OF CERTIORARI

The Armco Employees Independent Federation, Inc. respectfully petitions for a writ of certiorari to review the decision and judgment of the United States Court of Appeals for the Sixth Circuit in *Armco Employees Indep. Fed'n, Inc. v. AK Steel Corp.*, No. 044110, 2005 WL 1993409 (6th Cir. Aug. 17, 2005), *petition for reh'g en banc denied* (November 22, 2005).

OPINIONS BELOW

The unreported opinion of the court of appeals, *Armco Employees Indep. Fed'n, Inc. v. AK Steel Corp.*, No. 044110, 2005 WL 1993409 (6th Cir. Aug. 17, 2005), *petition for reh'g en banc denied* (November 22, 2005), is attached at App. 1a – 13a. The unreported order of the court of appeals denying rehearing *en banc* is attached at App. p. 31a. The unreported opinion of the district court, *Armco Employees Indep. Fed'n, Inc. v. AK Steel Corp.*, No. C-103072 (S.D. Ohio, August 3, 2004) is attached at App. pp. 14a – 30a. The unreported opinion of the arbitrator is attached at App. pp. 32a – 51a.

JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was entered on August 17, 2005, App. pp. 1a – 13a, and its order denying rehearing *en banc* was entered on November 22, 2005, App. p. 31a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

RELEVANT PROVISIONS INVOLVED

Section 301 (a) of the Labor Management Relations Act, 29 U.S.C. § 185 (a), provides:

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Section 203 (d) of the Labor Management Relations Act, 29 U.S.C. § 173 (d), provides in pertinent part:

Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement.

STATEMENT

Petitioner Armco Employees Independent Federation (AEIF) and Respondent AK Steel Corporation (AK Steel) are signatories to a collective bargaining agreement. App. pp. 52a - 68a (*excerpts*). Article VII (Grievance Procedure) of the labor agreement provides for the **final and binding** arbitration of unresolved grievances. App. p. 61a.

Under Article X of the labor agreement, AK Steel is obligated to maintain an apprenticeship program. App. p. 40a. Prior to 1999, apprenticeship classroom training was provided in-house at AK Steel's Middletown (Ohio) Works, and apprentices were compensated for eight hours a day while attending in-house classroom training. *Id.*

In January of 1999, AK Steel informed the AEIF that it was relocating apprentice classroom training from the Middletown Works to a community college in Dayton, Ohio. *Id.* AK Steel further informed the AEIF that apprentices would be required to clock in at the Middletown Works at 7:00 a.m.; ride a company-provided and paid bus to and from the community college, and; clock out at 3:00 p.m. upon their return to the Middletown Works. The apprentices continued to be paid a full 8-hour day. *Id.*

Effective October 1, 2001, AK Steel unilaterally required apprentices to provide their own transportation to and from the community college, and specified that the required hours of attendance would be 7:00 a.m. to 3:00 p.m., exclusive of unpaid travel time. App. pp. 40a - 41a.

A grievance was brought on behalf of apprentices "enrolled in the Apprenticeship Program and attending classes or [who] will be attending apprentice-required classes at Sinclair Community College" App. p. 15a. It was signed by 173 apprentices, of whom 87 also provided their company check number; 145 apprentices did not sign the grievance. App. p. 3a; 13a, n. 1. The grievance sought as a remedy:

To have the Company return to the practice of providing safe transportation to and from the apprentice training at Sinclair Community College during work time and to be made whole

for time spent traveling to and from Sinclair Community College and to be made whole for incurred expenses such as but not limited to gas and parking fees.

App. p. 16a.

On August 7, 2002, the grievance was heard in arbitration. App. pp. 32a. The issue presented by the parties for determination was:

Did the Company violate the, [sic] Contract and or past practice by unilaterally discontinuing the provision of transportation and pay for transportation time to the apprentices required to attend apprenticeship training at an off site location in Dayton Ohio? If so what remedy shall be provided.

App. p. 34a.

In his resultant opinion and award, the arbitrator cited five separate Articles of the labor agreement, including Article VII (Grievance Procedure) – the same provisions cited by the parties in their post-hearing briefs to the arbitrator¹. App. p. 34a – 39a. The arbitrator found that AK Steel had engaged in a binding past practice of providing transportation and paid travel time to apprentices traveling to and from a mandatory offsite training facility. App. p. 50a. The arbitrator further found that AK Steel violated the collective bargaining agreement and past practice when it unilaterally terminated the practice and transferred the burden associated with transportation time and

¹ The parties' post-hearing briefs appear at pages 518 - 529 and 641 - 659 of the Joint Appendix submitted to the Sixth Circuit.

expense to the apprentices. *Id.* The arbitrator ordered, *inter alia*, that AK Steel "make whole all apprentices for travel time and out of pocket transportation expenses [.]” App. pp. 50a – 51a.

AK Steel, however, refused to comply fully with the arbitrator’s decision. Although AK Steel reinstituted the provision of transportation and compensated travel time for “all apprentices,” AK Steel did not make whole “all apprentices” for travel time and out of pocket transportation expenses. App. p. 17a. Although 318 apprentices attended off-site apprenticeship training during the relevant time period, AK Steel reimbursed only 87 of those apprentices. *Id.*

The AEIF brought suit under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, in the United States District Court for the Southern District of Ohio to enforce the arbitration decision and compel reimbursement for “all apprentices;” jurisdiction was invoked under 28 U.S.C. § 1331. App. p. 14a. Before the district court, AK Steel alleged that it had fully complied with the arbitrator’s award because the grievance was a “group grievance” under Article VII (B)(4)(b) of the labor agreement², and that only apprentices who signed the grievance *and* supplied their check number (87 apprentices) were entitled to be made whole. App. p. 22a AK Steel had not raised this contention before the Arbitrator. *Id.*

² Article VII (B)(4)(b) provides “Group grievances must be signed by the appropriate Trustee, Delegate(s), Grievancemen and at least one of the aggrieved parties. The names (and check numbers) of all employees alleged to be aggrieved must be identified and submitted with the grievance at the time of the filing or appeal to Step II.” App. p. 55a.

The district court entered partial summary judgment for the AEIF, concluding that AK Steel had not complied with the arbitrator's award because it had not made whole *all* apprentices for travel time and out of pocket travel expenses as ordered by the Arbitrator. App. p. 27a. The district court further found that AK Steel had waived any argument it may have had regarding the authority of the Arbitrator to award a remedy to "all apprentice," including apprentices who had not signed the grievance and provided their check number, due to its failure to raise such contentions before the Arbitrator. App. pp. 22a - 27a.

AK Steel appealed the judgment of the district court to the Sixth Circuit Court of Appeals invoking jurisdiction under 28 U.S.C. § 1291, and the Sixth Circuit reversed the district court's decision. App. pp. 1a - 13a. Although the court acknowledged that a reviewing court cannot overturn an arbitration award "[a]s long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority," quoting *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29 (1987), the court further quoted Sixth Circuit precedent that it nonetheless may deny enforcement of an arbitration award when "(1) it conflicts with the express terms of the agreement; (2) it imposes additional requirements not expressly provided for in the agreement; (3) it is not rationally supported by or derived from the agreement; or (4) it is based on general considerations of fairness and equity instead of the exact terms of the agreement." *Int'l Bhd. Of Teamsters, Local 519 v. UPS*, 335 F.3d 497, 507 (6th Cir 2003).

The court then proceeded to engage in *de novo* review of the arbitration record and interpretation of the underlying labor agreement, finding that: (1) the